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In The
Supreme Court of the United States

October Term, 1963

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DEPARTMENT OF MENTAL HYGIENE OF THE
STATE OF CALIFORNIA, PETITIONER,

V.

EVELYN KIRCHNER, Administratrix of the Estate of
ELLINOR GREEN VANCE, RESPONDENT.

(Petition for Writ of Certiorari to the Supreme Court
of the State of California)

AMICUS CURIAE BRIEF OF THE STATE OF
NORTH DAKOTA IN SUPPORT OF THE
PETITION FOR WRIT OF CERTIORARI TO
THE SUPREME COURT OF THE STATE OF
CALIFORNIA, FILED BY THE STATE OF
CALIFORNIA.

HELGI JOHANNESON
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Amicus Curiae.*

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CALIFORNIA.**

The Attorney General of the State of North Dakota, as Amicus Curiae, respectfully supports the Petition of the State of California, praying that a Writ of Certiorari issue to review the judgment of the Supreme Court of California entered January 30, 1964, rehearing denied February 26, 1964.

INTEREST OF THE STATE OF NORTH DAKOTA

The State of North Dakota respectfully submits this brief for the purpose of acquainting this Honorable Court with the substantial interest of this State in a prompt and final judicial determination of the constitutional issues raised in the case.

The presently standing opinion of the Supreme Court of the State of California reported in 60 AC 704, 388 P. (2d) 720, 36 Cal. Rptr. 488 (1964), seriously places in question the validity of pertinent statutes of the State of North Dakota which are similar in language but identical in scope and principle to the California statute considered by the Supreme Court of that State. The validity of the North Dakota laws is put in doubt as a result of the opinion and decision of the Supreme Court of the State of California which so broadly applies the Equal Protection Clause of the Constitution of the United States so as to bring within its prohibition the classification of persons responsible for the care and maintenance of patients in state institutions under the California statutes and likewise those of the State of North Dakota.

The applicable North Dakota statutes are found in Chapter 25-09 of the North Dakota Century Code, 1963 Pocket Supplement, specifically at Section 25-09-02 thereof which provides as follows:

"25-09-02. Expenses chargeable against patient or his estate—Filing claims—Duties of county judge.—Except as provided in section 25-09-11, expenses for care and treatment of each patient at the state hospital or state school shall be the actual average per patient cost incurred by the state at each such institution. The board of administration shall recover quarterly from the patient if possible, or from the person who has been a patient in such institution, after he has been discharged from the institution, expenses for care and treatment. If any patient is receiving social security or is a veteran who has received, who is receiving, or who is entitled to receive compensation or pension from the veterans administration, such expenses shall be a current claim against such patient and may be recovered monthly by the board of administration except that the amount of seven dollars and fifty cents shall be credited

to the patient's personal account from any social security money received. Claims for expenses incurred by the state for care and treatment of a patient at the state hospital or state school may be filed against the estate of such patient after his death, at any time prior to final distribution thereof, by the board of administration in the same manner and with the same effect as claims of general creditors are filed against estates of decedents. Every county judge shall forward to the board of administration a list of the names of all persons whose estates have been entered for probate or heirship proceedings in his respective county court together with the legatees, devisees, and heirs at law of such estates within thirty days after the filing of the original certificate of any probate or heirship proceedings. The board of administration shall provide all county judges with forms for the purpose of carrying out the provisions of this section.

SOURCE: S. L. 1961, ch. 211, § 1; 1963, ch. 222, § 1."

Further, Section 25-09-04 of the above supplement to the N.D.C.C., defines "responsible relatives" as follows:

"25-09-04. Responsible relatives shall pay for care and treatment—Definition.—In the event of the patients' inability to pay for the costs of care and treatment, responsible relatives of such patients at the state hospital or state school shall pay to the board of administration quarterly, such costs as the board may determine reasonable for the care and treatment of patients at each institution. For purposes of this chapter and title 25 of this code "responsible relatives" shall mean the patient's spouse, father, mother or children.

SOURCE: S. L. 1961, ch. 211, § 1; 1963, ch. 222, § 3."

In North Dakota, collections for the past Biennium, based on the aforesaid statutes, totaled over Two and One Half Million Dollars. Further, and as a direct result of the California decision, we are presently being challenged both

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administratively and through legal process at all levels of our legal jurisdictions, with the exception of our North Dakota Supreme Court, all challenges being based on the Kirschner decision, thus causing grave uncertainty as to our own statutes and enforcement procedures.

It thus appears that the thrust of the opinion and decision of the Supreme Court of the State of California seriously impugns the substantially similar statutes of the State of North Dakota. The Attorney General of the State of North Dakota is deeply concerned about the grave issues raised in this case and presented in the instant petition for certiorari filed in this court.

The State of North Dakota, by Helgi Johanneson, Attorney General of the State of North Dakota, hereby adopts and joins in the position, reasons advanced for the granting of the petition for certiorari and argument of the State of California in the above entitled matter, as contained in the petition for certiorari filed in this court.

CONCLUSION

The petition for writ of certiorari should be granted.

Dated September 24, 1964.

Respectfully submitted,

HELGI JOHANNESON,
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WESLEY N. HARRY,
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*Attorneys for the State of
North Dakota, Amicus Curiae.*